

# Public Consultation Paper

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*of the Committee for Family Justice*

7 May 2014

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## I. THE COMMITTEE FOR FAMILY JUSTICE

1. The family justice system plays a central role in building strong, resilient families and helping families resolve their disputes. This role has never been more crucial. The strains on family life have grown significantly in the last two decades. This has translated into a marked increase in the number of divorces and family disputes in Singapore. Since 1980, the number of divorces in Singapore has more than quadrupled. Each year, about 7,000 divorce cases reach our Courts. In 2012 alone, our Courts heard more than 24,000 cases involving family matters.
2. At the Opening of the Legal Year 2013, the Honourable the Chief Justice Sundaresh Menon announced the establishment of an inter-agency committee to study and recommend possible reforms to the family justice system to better serve the needs of families in distress.
3. The Committee is helmed by Senior Minister of State for Law & Education Ms Indranee Rajah SC and Justice V K Rajah, Judge of Appeal, Supreme Court of Singapore. Members of the Committee and its Subcommittees come from a range of backgrounds involved in family justice, including the Ministry of Law, the Ministry of Social and Family Development, the Supreme Court, the State Courts, social service agencies and the legal fraternity.
4. The Committee's objective is to establish a problem-solving family justice system that will:
  - i. Protect and support the family as the basic unit of our society;
  - ii. Ensure that the interests of the child are protected;
  - iii. Effectively and fairly resolve family conflicts;
  - iv. Reduce the emotional burden, time and cost of resolving family disputes; and
  - v. Increase access to family justice for all.
5. Over the past 12 months, the Committee and its Subcommittees have engaged in wide-ranging and comprehensive discussions, and consulted extensively with stakeholders in the family justice ecosystem. The Committee also undertook study visits to Australia, Germany and the United Kingdom to learn from the family justice systems in these jurisdictions. Comparative studies of jurisdictions in both the civil and common law traditions were also conducted. This Public Consultation Paper represents the culmination of the Committee's work.

## II. SEEKING YOUR VIEWS

6. Your views and suggestions are essential in helping the Committee formulate a final set of recommendations which will form the building blocks of a new family justice system that will serve families in need through the administration and dispensation of justice and family support services in the years to come.
7. To this end, we would like to invite you to share with us your views on the Committee's interim recommendations, as contained in this Consultation Paper. In providing your responses, please do not feel obliged to address every recommendation.
8. Please send all submissions by **7 June 2014** in electronic form or hard copy to:

Committee for Family Justice  
c/o Legal Policy Division, Ministry of Law  
100 High Street  
#08-02, The Treasury  
Singapore 179434  
Fax: 6332 8842  
Email: MLAW\_Consultation@mlaw.gov.sg

9. We would be grateful if your submissions could adhere to the following:
  - i. Please include your name, your organisation, contact details (telephone and email).
  - ii. For soft copies, please use Microsoft Word or Adobe PDF format.
  - iii. Please include all supporting documents.
10. Receipt of your submissions will be acknowledged electronically. We may also quote excerpts of your submissions in the Committee's final set of recommendations. All material used will be attributed unless you indicate that you wish to remain anonymous.

### III. EXECUTIVE SUMMARY OF INTERIM KEY RECOMMENDATIONS

11. The family is the basic building block of Singapore society. It is one of the biggest sources of support, happiness and fulfilment in our lives. Unfortunately, many families experience hardship, such as divorce, abuse, and neglect. Our family justice system, which comprises the courts, as well as an extensive network of social services, serves to help families through these difficulties.
12. There is much to be proud of in our current family justice system, which has done a remarkable job through the years to serve our families experiencing difficulties. All the stakeholders in the current family justice system have spared no effort in supporting our families and are fully committed towards serving our families well. But, as is the case for any system, our family justice system can and should be further improved to enhance access to justice and ensure that families in crises are well supported as they go through a difficult chapter in their lives.
13. The Committee's interim key recommendations are set out below.

(A) *Community support and solutions*

i. **Strengthening community touch points**

Community touch points play an important role of directing those in need to the appropriate family support services. These touch points should thus be equipped to identify and understand the issues faced by families. They could be provided with information toolkits and guides on available social services to facilitate their work.

Community touch points should also be empowered to identify and assist youths-at-risk. To this end, a "whistle-blowing" mechanism should be established where the community touch points who come into contact with cases of child abuse, neglect, or delinquency are encouraged to report such cases to the correct authority.

ii. **Establishment of Specialist Agencies**

Families facing divorce or family violence related issues face multiple issues and would be best supported by Specialist Agencies which are staffed with social service practitioners equipped with specialist knowledge and skills in handling divorce and family violence issues. Today, there are three Family Violence Specialist Agencies and a new group of Divorce Support Specialist Agencies should be established. These Specialist Agencies can provide services ranging from information and non-legal advice, to end-to-end case management by social workers, counselling, and family dispute management.

They can also run programmes catered to the unique needs of families facing divorce and family violence issues.

**iii. Introduction of pre-writ consultation session**

Before filing for divorce in the Family Court, it would be beneficial for divorcing couples to undergo a pre-filing consultation session.

The objective of the consultation session is to help parties understand the issues arising in a divorce and its impact on children. This will help parties make an informed decision on the divorce and prioritise the welfare of their children before they file for divorce in court. These consultation sessions may be conducted by trained social service practitioners from the Divorce Support Specialist Agencies and accredited family lawyers.

Attendance at this consultation session could be made mandatory for parents with minor children. If so, exemptions may be made for cases in which family violence is involved or where one party intentionally refuses to attend to “stall” the divorce.

**(B) *The new Family Justice Courts***

**i. Establishment of the new Family Justice Courts**

The new Family Justice Courts comprising the Family Court, the High Court (Family Division) and the Juvenile Court should be established. The constituent courts within the new Family Justice Courts should hear all family-related cases, including: (i) adoption and guardianship issues; (ii) issues under the Women’s Charter; (iii) applications for deputyship under the Mental Capacity Act; (iv) juvenile and care and protection matters under the Children and Young Persons Act; and (v) probate and succession matters. There should be a central Registry to manage and administer all cases in the Family Justice Courts.

In this regard, the Committee proposes that the Juvenile Court be renamed the “Youth Court” as the term “youth” is more neutral than the term “juvenile”, which carries negative connotations.

**(C) *Enhancing court case management policies and processes***

**i. Differentiated case management process**

Differentiated case management, a docketing system and case management tools should be introduced. The Family Justice Courts should provide different tracks for each type of case that enters the court system. Depending on the subject matter and the issues that arise, each case should be assigned to a particular track that is most appropriate for the case on hand. For example, urgent cases in which family and child safety issues are involved may be put

on the expedited track, while complex cases may require more specialised attention.

**ii. Simplification and streamlining of court processes and practices**

Court processes and practices should be simplified and streamlined to make the family justice process more efficient and accessible to unrepresented litigants, who form the overwhelming majority of court users.

**iii. “Court Friend” scheme to assist unrepresented litigants in navigating the court system**

In addition to the simplification of court processes and court forms, unrepresented litigants may be assisted in court by a Court Friend, who will render practical support throughout the court process, including assistance in filling court forms, administrative and procedural matters. However, the Court Friend would not be able to represent unrepresented litigants or have rights of audience before the court.

**(D) Strengthening the court’s powers in resolution and adjudication of family disputes**

**i. A Judge-led approach to adjudicating family disputes**

Judges should be empowered to adopt a Judge-led approach and take a more proactive role in court proceedings, where appropriate, e.g. identify the relevant issues and direct parties to address these issues; determine the manner in which evidence is produced and admitted; draw out relevant evidence from parties; regulate the filing of court documents by the parties; and identify options moving ahead.

**ii. Empowering the court to direct parties to appropriate family support services**

The court should be given the power to order parties to mediate their disputes or seek other forms of family support services (e.g. counselling) at any stage of the proceedings. The court may also conduct mediation in appropriate cases. The court may also involve support professionals such as social workers, psychologists and counsellors during the court process.

**(E) Protecting the best interests of the child**

**i. A dedicated department to provide a voice to the child**

It is proposed that the Counselling and Psychological Services (CAPS) of the State Courts, in collaboration with the Ministry of Social and Family Development (MSF), have an expanded mandate to better represent the voice of the child, with proper resourcing.

For court applications which involve children, court mental health professionals in this department should work with families and provide judges with the advice, information and recommendations they need to make

a considered decision about each child's future, taking into account what is in their best interests. This includes working with children to find out their wishes and feelings, and reporting these findings to the court. These court mental health professionals should listen to all parties, including relevant community partners working with the family, and provide an independent voice for the child.

**ii. Appointment of Child Representatives in court proceedings involving children**

In court proceedings where a child is involved, the interests of the child should be safeguarded by the appointment of Child Representatives in appropriate cases, who may, among other matters, act as the child's advocate, interview children and their parents, and prepare independent reports on the arrangements and decisions which will serve the child's best interests for the court's consideration.

**iii. Involving social and psychological service professionals in court proceedings**

The court should be empowered to order, where appropriate, for expert assistance to be provided, in order to assist the court in its decision-making and ensure that the best interests of the parties and, in particular, the children are promoted. For example, social workers, psychologists and counsellors may assist the court.

**(F) *The Family Law Practitioner (FLP) accreditation***

FLPs are lawyers who have undergone specialist training so that they are equipped to practise family law effectively in a manner that is consistent with and promotes the ethos of the new family justice system. Such specialist training may comprise modular courses in non-court dispute resolution methods, the judge-managed approach and less adversarial techniques in family litigation, as well as non-legal aspects of family cases such as the availability of social support services. It should not be compulsory for all lawyers to be accredited as an FLP, although it is desirable that all who practise family law should do so.

14. The interim key recommendations are further described and explained in the ensuing sections of this Consultation Paper.



## IV. DETAILED INTERIM RECOMMENDATIONS

### A. COMMUNITY SUPPORT AND SOLUTIONS

15. There are many avenues which families can turn to when they face problems.
16. The Committee received feedback that while there are numerous avenues providing a substantial range of services, the stakeholders that provide these services and the community touch points that encounter families in need do not always work in a synergistic and seamless manner. Stakeholders may not necessarily know what the others are doing to help families. On the other hand, families that face difficulties may not know where the right places to go to obtain the appropriate assistance are.
17. This creates gaps in the family justice system, and results in families in need not being matched to the assistance appropriate for their problems. The Committee is of the view that this is a gap that should be bridged in order to create a seamless and integrated system that effectively provides the appropriate services to families in need.
18. The feedback also identified a lack of specialised services targeted at addressing issues pertaining to divorce and family violence. Given the relatively large number of divorces each year and the increasingly complex issues these families face (e.g. marriages between Singapore citizens and foreigners, marriages involving complex custody issues and/or substantial matrimonial assets), the Committee is of the view that there will be a rising demand for such services.

#### i. Strengthening community touch points

19. Families may turn to a wide range of community touch points for help when they experience family conflict. The importance of the roles played by our community touch points cannot be overstated. A community touch point is any person or organisation in the community that families are likely to turn to for help when they face family conflict. These touch points include community groups such as Self-Help Groups and religious organisations, social service agencies such as MSF's Social Service Offices and Voluntary Welfare Organisations, lawyers and the Police.
20. Families that approach community touch points for help may not always be able to articulate their difficulties or ask for the right kind of help. They may also not always approach the right touch points that may provide the help appropriate for their problems. Similarly, community touch points may not know all the available avenues for assistance, and may not be equipped to identify family problems and make the appropriate referrals.

21. Solutions to address this issue should leverage upon the normal patterns of behaviour of families in distress. The Committee recommends that all community touch points be equipped with knowledge on how to identify and understand the issues that families who approach them face and the kind of assistance they require, and refer these families to the appropriate agencies for assistance. In particular, the frontline personnel of community support agencies should be properly trained.
22. For example, if a married couple faces a relationship breakdown and wishes to divorce, they may approach their pastor for help. The pastor and church should be aware that there are specialist social agencies (please see the section below on “Establishment of Specialist Agencies” for details) that assist parties considering or who have gone through a divorce and be able to refer the couple to these Specialist Agencies depending on their needs. To take another example, if a patient seeks treatment from a doctor for her bruises and the doctor suspects that family violence is a probable cause of the bruises, the doctor should be able to refer the patient to the police or an agency specialising in family violence. Existing inter-agency practices should be enhanced to allow for better communication and information sharing among agencies.
23. To this end, the Committee recommends that community touch points be provided with information on available social support services which could be in the form of a handbook or toolkit. These should be informative, yet short and accessible, and written clearly, and published in at least the four major national languages. They should also be regularly upgraded and updated.
24. Experts in the field such as experienced family lawyers, counsellors and social workers with relevant qualifications may provide training to those working at the community touch points. Complementary outreach efforts may also be undertaken.
25. Specific to the area of divorce, information on topics such as the legal process of divorce, available legal clinics and support services for parties undergoing divorce are available on different websites. It will be useful if there were one regularly-updated website that pools together the information so that families can more easily access the resources they need.
26. Our community touch points also have an important role to play in identifying and assisting youths-at risk. They should be trained to identify such cases and know the appropriate avenues to which these cases should be referred, such as the Child Protection and Welfare Service of MSF.<sup>1</sup>

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<http://app.msf.gov.sg/Policies/StrongandStableFamilies/NurturingProtectingtheYoung/ChildProtectionWelfare/PolicyonProtectionWelfareofChildren.aspx>

27. The Committee further recommends that “whistle-blowing” mechanisms be established where the community touch points which come into contact with cases of child abuse, neglect or delinquency are encouraged to report such cases to the correct authority. The public may also be educated on the importance of responsibly reporting such cases to the proper authority. Proper safeguards and guidance should also be in place to prevent malicious or frivolous reporting.

**ii. Establishment of Specialist Agencies**

28. Financially vulnerable or disadvantaged families facing divorce or family violence issues require an integration of legal and social support. A group of specialist social agencies with social workers and counsellors trained in family conflict resolution skills and with a good knowledge of the legal process would be more effective in helping these families resolve their issues and receive the support they require.

29. Today, there are three Family Violence Specialist Agencies which handle moderate to high risk family violence cases. A new group of Divorce Support Specialist Agencies should also be established to provide more targeted support for vulnerable families facing divorce. These agencies should attend to the social support needs of divorcing/divorced parties and their children from the pre-court to post-court stages of the divorce. There could be three or four of such agencies established in key community nodes across the island. In total, these six to seven Specialist Agencies could collectively provide the following services:

- i. Information and non-legal advice (e.g. housing, finances, court processes and procedures, children issues)
- ii. Referral services to other social service agencies
- iii. Case management by social workers
- iv. Counselling
- v. Family dispute management
- vi. Run support programmes tailored to the unique needs of families facing family violence and divorce

30. Together with all stakeholders in the family justice system, the Specialist Agencies will strive to foster resiliency in families by empowering them to resolve disputes and problems by themselves.

31. The Specialist Agencies should focus on the more vulnerable families who present higher risks or face more complex issues that impact on a family’s safety and well-being. For these families, the social workers or counsellors at the Specialist Agencies should be the lead case manager and follow through

each case referred to them by the community touch points or the courts, to the point of case closure.

**iii. Introduction of pre-writ consultation session**

32. The legal route may not always be the best option to solve the problems that families face. Sometimes, families may go to the court without first understanding the implications. For example, a couple may not be aware of the possibility of attending counselling sessions aimed at addressing marital problems in order to save their marriages before filing for divorce.
33. Counselling<sup>2</sup> and the provision of appropriate divorce-related information can save some marriages. Even where the marriage has irretrievably broken down, mediation<sup>3</sup> can help the divorcing couple resolve their issues amicably and focus their attention on the needs of their children. Information sessions, counselling and mediation are most effective if provided early in the divorce process.
34. However, presently, couples may generally file for divorce without having gone through information sessions, counselling, mediation or any other form of assistance.
35. There are two exceptions. First, the Family Court requires divorcing couples with children aged 14 or younger to attend mandatory counselling and mediation at the Family Court's Child Focused Resolution Centre<sup>4</sup> (CFRC) after they have filed the writ of divorce, before their divorce may proceed to be heard by the court. The purpose of counselling and mediation at an early stage in a divorce is to help parents undergoing a divorce to better understand the effects of divorce and assist them in reaching amicable solutions that promote the best interests of their children.
36. Secondly, the Syariah Court requires all couples who intend to file for divorce to attend counselling sessions under the court's Marriage Counselling Programme<sup>5</sup> (MCP), the objectives of which are to save marriages, settle

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<sup>2</sup> Counselling may be described as a therapeutic process designed to deal with individual and interpersonal difficulties.

<sup>3</sup> Mediation is a process in which a neutral third party manages the negotiation between parties involved in a dispute with the aim of helping them reach a consensual outcome by themselves amicably.

<sup>4</sup> For more information, please visit: <https://app.statecourts.gov.sg/family/page.aspx?pageid=83665>

<sup>5</sup> The Marriage Counselling Programme was first implemented in October 2004. To date, Syariah Court has 15 counselling agencies participating under the Marriage Counselling Programme. The Syariah Court's Marriage Counselling Partners are experienced and qualified professionals who will work with couples to resolve their issues. These partners are able to provide a more holistic approach in assisting couples in a more conducive environment. Religious inputs will be provided by Asatizah (religious scholars) in the course of these sessions upon request. Religious scholars act as resource persons to attend to enquiries by clients/counselors on Muslim law pertaining to Muslim divorces/marriages.

divorces amicably, and facilitate clients' access to social support services. Parties are allowed to commence their divorce applications only after they have attended these counselling sessions.

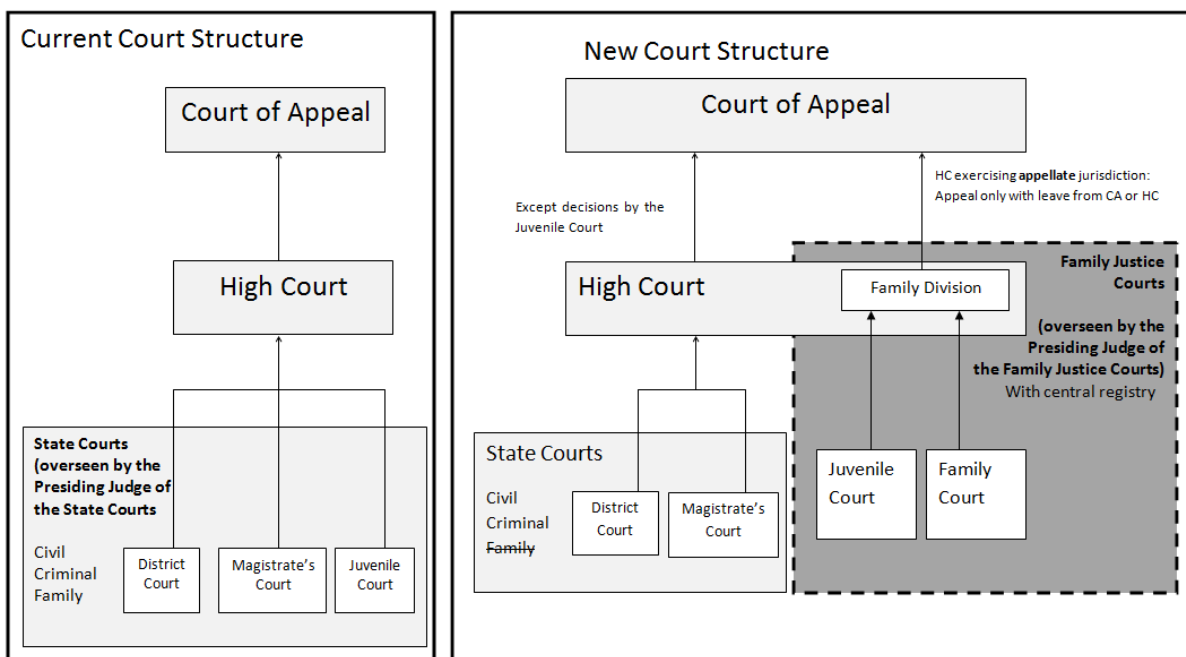
37. The Committee proposes to build upon these efforts to encourage parties to resolve their disputes constructively and amicably, and protect the welfare of children by introducing a pre-filing consultation session.
38. Before filing for divorce in the Family Court, divorcing couples should undergo a pre-filing consultation session.
39. The objective of the consultation session is to help parties understand the issues arising in a divorce and its impact on children. This will help parties make an informed decision on the divorce and prioritise the welfare of their children before they file for divorce in court. The Committee proposes that the sessions cover the following topics:
  - i. Paramount importance of the welfare of the child
  - ii. Impact of divorce on the child and the importance of positive co-parenting
  - iii. Child maintenance, custody and access
  - iv. Avenues for assistance (e.g. Specialist Agencies, Family Service Centres, Legal Aid Bureau)
  - v. Benefits and process of settlement outside of the court, including non-court dispute resolution options (e.g. mediation)
  - vi. The practical considerations of divorce (e.g. housing and financial issues)
40. The pre-filing consultation sessions should be conducted by trained social service practitioners from the Divorce Support Specialist Agencies. Accredited family lawyers could also be considered. The manner in which pre-filing consultation is provided should be calibrated to cater to the needs of different profiles and types of families. Counselling, mediation, workshops and other forms of assistance and services may be offered as options to the parties at these sessions. For example, parties who show interest in wanting to work on their marriage could be referred to marriage counselling services, and parties who require specific housing advice for their specific circumstances may be referred to HDB Branches which are in a better position to advise them directly.
41. Attendance at this consultation session could be made mandatory for parents with minor children. If so, exemptions may be made for cases in which family violence is involved or where one party intentionally refuses to attend to "stall" the divorce.

## **B. THE NEW FAMILY JUSTICE COURTS**

42. The Family Court of Singapore was established on 1 March 1995 under the auspices of the State Courts as a court specialising in the adjudication of family-related disputes. It comprises the District Court and Magistrate's Court.
43. The Family Court hears the following types of cases:
  - i. Adoption proceedings under the Adoption of Children Act (Cap 4);
  - ii. Divorce, nullity and judicial separation proceedings under the Women's Charter (Cap 353);
  - iii. Guardianship, custody, care and control of and access to children under the Guardianship of Infants Act (Cap 122) and the Women's Charter;
  - iv. Division of matrimonial assets under the Women's Charter;
  - v. Personal protection orders under Part VII of the Women's Charter;
  - vi. Spousal and child maintenance under Parts VIII and X of the Women's Charter;
  - vii. Enforcement of maintenance orders made by the Family Court, the Maintenance of Parents Tribunal and the Syariah Court under the Women's Charter, the Maintenance of Parents Act (Cap 167B) and the Administration of Muslim Law Act (Cap 3) respectively;
  - viii. Reciprocal enforcement of maintenance orders made by foreign courts or tribunals under the Maintenance Orders (Facilities for Enforcement) Act (Cap 168) and Maintenance Orders (Reciprocal Enforcement) Act (Cap 169);
  - ix. All civil applications under the Mental Capacity Act (Cap 177A); and
  - x. Proceedings under the International Child Abduction Act (Cap 143C).
44. However, the Family Court does not hear the following types of family-related cases:
  - i. Division of matrimonial assets under the Women's Charter where the total amount of assets is worth more than \$1.5m – these cases are heard in the High Court.
  - ii. Proceedings under the Children and Young Person's Act (Cap 38) (e.g. child protection and Beyond Parental Control cases) - these cases are heard by the Juvenile Court of the State Courts.
  - iii. Probate and administration of estate matters - these cases are heard by either the Civil Justice Division of the State Courts or the High Court, depending on the amount of the estate.
45. The Committee recommends that a new body of courts known as the Family Justice Courts comprising the Family Court, the High Court (Family Division)

and the Juvenile Court be established. The constituent courts of the new Family Justice Courts should hear all family-related cases, including: (i) adoption and guardianship issues; (ii) issues under the Women’s Charter; (iii) all civil applications under the Mental Capacity Act (Cap 177A); (iv) juvenile and care and protection matters under the Children and Young Persons Act; and (v) probate and succession matters. The Family Court in particular should hear all matrimonial proceedings. There should be a central Registry to manage and administer all cases in the Family Justice Courts.

46. The diagram below depicts the present court structure and the new court structure with the introduction of the Family Justice Courts:



47. Like the State Courts, the Family Justice Courts should be headed by the Presiding Judge of the Family Justice Courts, who is the most senior judge of the Family Justice Courts and is a Judge or Judicial Commissioner of the Supreme Court. The Presiding Judge should be appointed by the Chief Justice. The Presiding Judge should be empowered to hear cases in the Family Court or the High Court (Family Division), *qua* District Judge or High Court Judge respectively.

48. The Family Court should be staffed by District Judges and Magistrates, who should collectively hear all cases filed in the Family Court.

The Juvenile Court should come under the Family Justice Courts instead of the State Courts. The Juvenile Court should continue to hear cases under the Children and Young Persons Act. In this regard, the Committee proposes that the Juvenile Court be renamed the “Youth Court” as the term “youth” is more neutral than the term “juvenile”, which carries negative connotations.

49. The High Court (Family Division) should primarily hear appeals against decisions of the Family Court and the Juvenile Court. The exercise of the High Court's original jurisdiction should be reserved to cases in which the judgment would need to be enforced overseas, those which involve international child abduction, cases involving complex issues of fact or law, and other cases prescribed by the Chief Justice.
50. The High Court's decisions in appeals from the Family Court may be appealed to the Court of Appeal only if the Court of Appeal or a High Court Judge of the High Court (Family Division) grants leave to do so.
51. Decisions of the High Court (Family Division) in exercise of the High Court's original jurisdiction may be appealed to the Court of Appeal as of right.
52. A new Family Justice Act should be enacted to establish the new Family Justice Courts. The Act should set out the jurisdiction and powers of the Family Court and the High Court (Family Division), as well as allow procedural rules governing proceedings in the Family Court and the High Court (for family-related proceedings) to be established by subsidiary legislation.
53. A Family Justice Rules Committee should be established under the new Act. The Family Court Rules Committee should be empowered to make Family Rules of Court that comprehensively prescribe the procedures for all cases heard by the Family Court and the High Court (Family Division) (e.g. court forms and templates, costs, case management, conduct of hearings, execution of judgments and orders).



## C. ENHANCING COURT CASE MANAGEMENT POLICIES & PROCESSES

54. Together, the Family Court and the Syariah Court hear the bulk of family-related cases in Singapore.
55. Over the years, our courts have implemented numerous innovative programmes and improvements that serve to make the court process smoother and achieve better outcomes for all litigants.
56. However, more can always be done to make the court process simpler and faster. The Committee has received feedback that legal processes in general can be daunting for families, particularly those who are not legally represented. The resolution of disputes sometimes takes longer than necessary. In addition, the court system is “adversarial”<sup>6</sup>, which may not be the most suited to resolving family disputes. Finally, as disputing couples are the main participants in the process, the child’s voice is sometimes not heard as clearly as it should be.
57. The Committee’s recommendations below aim to enhance existing court processes and programmes in both the Family Court and where relevant, the Syariah Court to address these issues. In implementing the recommendations, the Family Court and the Syariah Court should continue to work together by sharing resources and tapping into each other’s expertise and institutional experience.

### i. Differentiated case management process

58. Every case that enters the Family Court or the Syariah Court is unique. The issues and subject matter may differ from case to case, and the families involved in each case have different needs. Hence, each case should be managed sensitively, efficiently and appropriately to address the needs of parties and the issues which arise.
59. The Committee proposes the introduction of differentiated case management. Differentiated case management is a technique courts can use to tailor the case management process and effectively allocate judicial resources to tackle issues in each case and expedite the resolution of cases. It is characterised by the early differentiation of cases entering the justice system in terms of the nature and extent of court resources the cases will require.
60. The Family Court and the Syariah Court may provide different tracks for each type of case that enters the court system. Depending on the subject matter

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<sup>6</sup> An “adversarial” approach to litigation is where both opposing parties present their own case, including the legal arguments and evidence to a judge, who decides which side has a better case and hence have an order or judgment of the court granted in his or her favour, on the basis of the presented evidence. Currently, litigation in our court is primarily adversarial in nature.

and the issues that arise, each case should be assigned to a different track that is most appropriate for the case on hand. For example, urgent cases where family and child safety issues are involved may be put on the expedited track, while complex cases may require more rigorous and specialised attention.

61. The Committee proposes that the process and timelines applicable to a case should depend on the track that the case is assigned to.
62. Possible tracks include:
  - i. Uncontested fast track – for cases that are uncontested
  - ii. Cases involving young children – child-related issues such as custody and access may be identified and addressed early
  - iii. Violence track – for cases involving family violence and abuse, which should be expedited for hearing
  - iv. Unrepresented litigants track – cases involving unrepresented litigants may require more guidance from the court
  - v. Financial track – for cases where the issues are primarily financial in nature, like division of matrimonial assets and maintenance
  - vi. High conflict track – for cases involving a high level of conflict between parties
  - vii. Complex track – for cases involving complex issues of law and/or facts
  - viii. International track – for cases involving an international element, like parties with different nationalities, conflict of law issues
63. The Family Court should be given discretion to implement a rigorous screening process to determine which track each case should be placed on and ensure that each case is given the appropriate attention. For example, the court may interview the parties or require the parties to fill in and submit brief questionnaires. Generally, parties should be made aware of the timelines for their cases at an early stage of the proceedings, so they have an indication of when their cases are expected to be completed.

**ii. Simplification and streamlining of court processes and practices**

64. Parties in the Family Court and the Syariah Court are often unrepresented and hence unacquainted with the procedural requirements for their cases. They face difficulties completing and filing the relevant court documents and following the court's processes properly. As a result, proceedings may take a longer time, and the resources and attendant cost required increased.
65. To address this issue, the Committee proposes that court forms be simplified and procedures be further streamlined so that cases are heard and resolved expeditiously, and costs are reduced to the minimum for the parties. Ideally court processes should be so simple and user-friendly that an unrepresented litigant will be able to handle the process himself.

66. Ways of streamlining court forms and procedures can include the following:
- i. Simplify the language used in court documents
  - ii. Develop user-friendly standard court forms and templates and providing these forms and templates online in softcopy on a single website. They may be completed and submitted to the court electronically.
  - iii. Require parties to file to the court a prescribed list of information on their assets and other relevant matters together with their initial application
  - iv. Reduce the number of court documents to be filed and consolidate the information provided presently into fewer documents. Court documents that serve no real purpose should be removed altogether.
  - v. Introduce a strict limit on the number of affidavits and pages thereof that may be filed by parties, particularly in relation to ancillary matters in divorce proceedings.
  - vi. Set strict requirements on the type of content in affidavits to ensure that only relevant evidence is adduced through the use of templates
  - vii. Restrict the filing of fresh maintenance applications without good reason and, if appropriate, to enable ongoing divorce and ancillary proceedings to proceed without delay.
  - viii. Reduce the number of status and pre-trial conferences and allow parties to write in to make requests. Allow more hearings and/or pre-trial conferences to be held *via* video-link
  - ix. Empower the court to make appropriate cost orders should irrelevant or inappropriate court documents be filed
67. Together, the Family Court and the Syariah Court should lead the initiative to streamline court forms and procedures, in close consultation with stakeholders, including court users and lawyers.
- iii. **“Court Friend” scheme to assist unrepresented litigants in navigating the court system**
68. Many litigants in the Family Court are unrepresented. They are usually unfamiliar with court procedures and processes, and often experience frustration and difficulties navigating the court system. Of particular note is the group of unrepresented litigants who do not qualify for legal aid and yet cannot afford to engage lawyers.
69. To address this issue, the Committee proposes the introduction of a “Court Friend” scheme, modelled after the McKenzie Friend system established in the United Kingdom’s courts.<sup>7</sup> A Court Friend should be assigned to assist the unrepresented litigant by providing administrative and emotional support in the conduct of his case, such as:

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<sup>7</sup> For more information, please see the McKenzie Friends guidance July 2010 published by the UK courts: <http://www.judiciary.gov.uk/publications-and-reports/guidance/index/mckenzie-friends>

- i. Provide information on court procedure and processes, as well as various avenues for assistance outside the court.
  - ii. Assist unrepresented litigants in preparing and filing court documents
  - iii. Provide emotional and moral support throughout the court process
  - iv. Assist in court hearings by helping unrepresented litigants undertake tasks such as taking notes of court proceedings and organising documents for use in court
  
70. The Court Friend may attend hearings with the litigant, but should not be allowed to provide legal advice and/or legal representation. The Court Friends scheme can build upon the existing Befriending Service provided by the Community Justice Centre<sup>8</sup> of the State Courts. The Court Friends scheme can also complement other measures to form part of a holistic package to assist unrepresented litigants.
  
71. The Syariah Court may work together with the Family Court in extending the Court Friend Scheme to unrepresented litigants in the Syariah Court.

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<sup>8</sup> <http://cjc.org.sg/>

## **D. STRENGTHENING THE COURT'S POWERS IN THE RESOLUTION AND ADJUDICATION OF FAMILY DISPUTES**

### **i. A Judge-led approach to adjudicating family disputes**

72. Presently, the court hearing process for all cases heard in the Family Court is fundamentally adversarial in nature - parties present their own cases and produce their own evidence before a judge who will decide the case. The adversarial approach is not always appropriate and may, in some cases, exacerbate conflict and prolong the time to adjudicate disputes.
73. The Committee proposes the introduction of elements into the court hearing process which (a) empowers the judge to proactively guide and direct proceedings, (b) reduces the acrimony between parties, and (c) minimises the negative impact that court proceedings may have on the parties involved, especially the children.
74. Introducing these elements into the court process of the Family Court will help parties focus on the relevant issues, reduce the costs of litigation and the deployment of judicial resources, and expedite the fair and just resolution of cases.
75. To this end, the Committee recommends that judges should be empowered to take a more proactive role in court proceedings by doing the following:
- i. Identify the relevant issues and direct parties to address these issues
  - ii. Discuss with parties the strength of their respective cases
  - iii. Direct parties and/or external parties to produce evidence
  - iv. Require the attendance of witnesses
  - v. Determine the manner in which evidence is produced and admitted
  - vi. Directly question parties and witnesses
  - vii. Determine the manner and extent of cross-examination by the parties
  - viii. Regulate the filing of court documents by the parties
  - ix. Direct third parties to obtain evidence, investigate the facts of the case, and/or produce reports
  - x. Identify options moving ahead (e.g. counselling and mediation)

### **ii. Empowering the court to direct parties to appropriate family support services**

76. The legal process of adjudication in the court may not necessarily be the best solution to the problems a family is faced with. As such, it is beneficial to put in place a mechanism through which the court may direct cases filed in court to different avenues of assistance and resolution, depending on the needs and issues faced by each family. The court will be in a good position to assess the

cases before it and determine whether the families involved in the cases need to avail themselves of family support services.

77. The Committee recommends that at any stage of proceedings in all cases, the court should be empowered to, where appropriate, direct parties to avail themselves of mediation, counselling or other family support services.

## **E. PROTECTING THE BEST INTERESTS OF THE CHILD**

78. Presently, children do not have an independent voice before the court. Parents have their children's best interests at heart and aim to work out mutually-agreed upon arrangements for the sake of their children. However, there are situations where parents are caught up in their own issues and lose sight of what is best for the child's welfare. In this context, when presenting their cases, parents may not sufficiently bring the children's best interests to the court's attention. As a result, the court may not have the full facts regarding the child's interests when arriving at a decision.
79. The Committee recommends three measures to ensure that the voice of the child is heard and that his best interests are protected.
  - i. **A dedicated department to provide a voice to the child**
80. CAPS of the State Courts has a slew of programmes to assist the Family Court to help families and individuals manage their emotions and resolve conflicts during the court process, and to aid the court in the decision-making process.
81. To ensure that the child's best interests are protected and the voice of the child is heard in court proceedings, the Committee recommends that CAPS, in collaboration with MSF, be given an expanded mandate and provided with proper resourcing to fulfil that mandate.
82. For court applications which involve children, court mental health professionals in CAPS should work with families and provide judges with the advice, information and recommendations to make a considered decision about each child's future, taking into account what is in their best interests. This includes working with children to find out their wishes and feelings, and reporting these findings back to the court. The court mental health professionals should listen to all parties, including relevant community partners working with the family, and provide an independent voice for the child.
83. The work of CAPS under its expanded mandate can include:
  - i. Conducting background checks and records relating to the family, such as family violence, financial problems, social assistance record, offender record, mental health and drug abuse issues.
  - ii. Carrying out an assessment and determination of the risks the child is exposed to, as well as the wishes and feelings of the child. This can culminate in a child impact report.
  - iii. Recommending intervention strategies to ensure that the best interests and welfare of the child are furthered.

ii. **Appointment of Child Representatives in court proceedings involving children**

84. The Committee proposes that the court be empowered to appoint child representatives to independently represent the children in appropriate cases. For example, child representatives may be particularly helpful in high-conflict proceedings involving disputes over custody of and access to children or in highly acrimonious situations where there is a high possibility that the child would be adversely impacted and conflicted in sharing his/her views.
85. The primary role of the child representative is to represent the child's views and best interests in court proceedings, thus helping to ensure that the decisions eventually made by the court are in the child's best interests. In discharging his duty, the child representative should work with lawyers, social workers, counsellors, psychologists and other persons who are assisting the family.
86. In helping the child, a child representative may carry out the following:
- i. Interview and interact with the child and/or the parents in order to explain the court processes to them and understand them better
  - ii. Give advice and information to the child and/or the parents
  - iii. Facilitate the child's and parent's cooperation with the professionals assisting them (e.g. counsellors, interviewers)
  - iv. Prepare written reports for the court's consideration
  - v. Give their views during the court hearing
87. The Committee's proposal is drawn from examples in leading jurisdictions such as the commonwealth of Australia where courts are empowered to appoint a person, usually a lawyer, to provide independent representation for the child in proceedings before the court. The role of such persons is to form an independent view, based on the evidence available to him, of what is in the best interests of the child.
88. Legally trained persons such as lawyers, particularly those trained in family law and practice, are the prime candidates to be appointed as child representatives. While legal training is useful, the Committee is also aware of the additional dimensions and perspectives that professionals from other disciplines may bring in performing the role of child representatives. Thus, it may be possible for professionals such as social workers, psychologists and counsellors to be appointed as child representatives in appropriate cases.
- iii. **Involving social and psychological service professionals in court proceedings**



89. Expert assistance from social and psychological services assists the court in making the right decisions. For example, where divorcing parents disagree over who should be granted care, custody and control of the children, the court may wish to order the social worker who assisted the parents before their case was heard by the court to present his or her views on where the best interests of the children lie.
90. The Committee recommends that the court be empowered to order, where appropriate, expert assistance from social and psychological service professionals to be provided during the decision-making process to ensure that the best interests of the parties and, in particular, the children are promoted. Expert assistance may be provided from different professionals and take different forms. For example, social workers, psychologists and counsellors may assist the court. They may come from a variety of organisations and backgrounds that have previously assisted the families, such as the Specialist Agencies. Additionally, the court may also order the relevant professionals to produce reports for the court's consideration. The court should be given the discretion to determine who should provide the assistance and the form in which such assistance is to be provided. In doing so, the court should be sensitive to and address potential conflicts and confidentiality issues that may arise.

## **F. THE FAMILY LAW PRACTITIONER ACCREDITATION**

91. Families often approach lawyers to advise them on family conflict and disputes. Presently, lawyers practising family law are not required to have any specialised knowledge of the practical, social service and other relevant non-legal aspects of the family justice system.
92. The Committee proposes the introduction of a new Family Law Practitioner (FLP) accreditation for lawyers. FLPs are lawyers who have undergone specialist training so that they are equipped to practise family law effectively and in a manner that is consistent with and promotes the ethos of the new family justice system. Such specialist training may comprise modular courses in non-court dispute resolution methods, the inquisitorial approach and less adversarial techniques in family litigation, as well as non-legal aspects such as the availability of social support services.
93. Lawyers who have undergone such training should receive the FLP accreditation. It should not be compulsory for all lawyers to undergo the FLP training, although it is desirable that all who practise family law should do so. Such training should be offered in conjunction with the legal profession's continuing education programme.
94. The FLP curriculum should reflect the general ethos and approach towards managing and adjudicating family conflict and disputes in the new family justice system. The curriculum can include the following:
  - i. Identification of the underlying family problems which lead to legal disputes
  - ii. Knowledge of social support services and referral services – to refer parties to appropriate agencies and pathways
  - iii. Family Financial Advisory Practice (including basic financial and accountancy knowledge, as well as understanding of CPF and HDB policies)
  - iv. Case management techniques
  - v. Family dynamics, psychology and relationships, including the psychology of marriage and how parties of different nationalities and cultures interact
  - vi. Child psychology and development
  - vii. Issues of the elderly
  - viii. Family violence and child abuse
  - ix. Mental health and addiction
  - x. Basic knowledge of family therapy and counselling
  - xi. Skills for working successfully with children and youths
  - xii. Syariah Court practice, including Muslim law

- xiii. Family law (including adoptions, international cross border family issues and mental capacity matters) and latest updates and developments in the law
- xiv. Conduct of judge-led proceedings
  - xv. Family mediation
- xvi. Collaborative law
- xvii. Family arbitration

## V. CONCLUSION

95. The interim recommendations presented in this Public Consultation Paper represent the outcome of the first stage of the Committee's work, which is how the overall framework and infrastructure of the present family justice system can be fundamentally recast to better help and support families in distress.

In the next stage of its work, the Committee will review other specific aspects of the family justice system, including reviewing the enforcement of maintenance orders, resourcing and training of social service professionals and judges.

96. The Committee would like to thank all members of the public who have stepped forward to provide their invaluable feedback and comments on the Committee's key interim recommendations. All feedback and comments will be considered by the Committee in formulating the Committee's final set of recommendations.

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## Appendix A

### MEMBERS OF THE COMMITTEE FOR FAMILY JUSTICE

1. Ms Indranee Rajah SC, Senior Minister of State for Law and Education (Co-Chairman)
2. Justice VK Rajah, Judge of Appeal, Supreme Court (Co-Chairman)
3. Ms Lai Siu Chiu, Retired Judge, Supreme Court
4. Mr Andrew Ang, Retired Judge, Supreme Court
5. Judicial Commissioner Tan Siong Thye, Supreme Court
6. Judicial Commissioner See Kee Oon, Presiding Judge of the State Courts
7. Ms Juthika Ramanathan, Chief Executive, Judiciary Administration and Operations of the Supreme Court
8. Ms Jennifer Marie, Deputy Presiding Judge/Registrar of the State Courts
9. Ms Foo Tuat Yien, Senior District Judge, Family and Juvenile Justice Division, State Courts (till 12 March 2014); Senior District Judge, Civil Justice Division, State Courts (with effect from 13 March 2014)
10. Ms Valerie Thean, Deputy Secretary, Ministry of Law (till 12 March 2014); Senior District Judge, Family and Juvenile Justice Division, State Courts (with effect from 13 March 2014)
11. Ms Ong Toon Hui, Deputy Secretary, Ministry of Social and Family Development
12. Ms Goh Soon Poh, Deputy Secretary, Ministry of Home Affairs
13. Mr Poon Hong Yuen, Deputy Secretary, Ministry of Law (with effect from 13 March 2014)
14. Ms Ang Bee Lian, Chief Executive Officer, National Council of Social Service (till 31 October 2013)
15. Mr Sim Gim Guan, Chief Executive Officer, National Council of Social Service (with effect from 1 November 2013)
16. Mr Mohamad B Haji Rais, Senior President, Syariah Court
17. Ms Lim Hui Min, Director of Legal Services Unit, Ministry of Social and Family Development

18. Ms Ellen Lee, Consultant, Ramdas & Wong
19. Mr George Lim, Senior Counsel, Partner, Wee Tay & Lim LLP
20. Mr Randolph Khoo, Director, Dispute Resolution Department, Drew & Napier
21. Mr Yap Teong Liang, Founder and Partner, TL Yap & Associates
22. Ms Loh Wai Mooi, Founder and Partner, Bih Li & Lee
23. Dr Sudha Nair, Executive Director, PAVE (Promoting Alternatives to Violence)
24. Assoc Prof Debbie Ong, Faculty of Law, National University of Singapore
25. Ms Renjala Balachandran, Head, Family Service Centre, Singapore Indian Development Association